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Before the
State Of Wisconsin
Board of Nursing

In the Matter of the Disciplinary Proceedings
Against Melanie J. Hunter, R.N., Respondent.

FINAL DECISION AND ORDER

Order **ORDER 0007728**

Division of Legal Services and Compliance Case No. 19 NUR 215

The State of Wisconsin, Board of Nursing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Board of Nursing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 9th day of December, 2021.

Alex P. Jolietowski

Member
Board of Nursing



Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Melanie J. Hunter, R.N., Respondent

DHA Case No. SPS-21-0059
DLSC Case No. 19 NUR 215

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Melanie J. Hunter, R.N.

Watertown, WI 53098

Wisconsin Board of Nursing
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services,
Division of Legal Services and Compliance, by:

Attorney Julie Zimmer
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On July 22, 2021, the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division) served the Notice of Hearing and Complaint in this matter on Respondent by sending a copy to her address on file with the Department via certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).¹ Respondent failed to file an answer to Complaint, pursuant to Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an answer, Administrative Law Judge Angela Chaput Foy (ALJ) scheduled a telephone prehearing conference for August 30, 2021, at 11:00 a.m. Notice of the conference was sent to both parties. Respondent failed to appear for the prehearing conference.

¹ The Department also emailed a copy to Respondent's email address on file with the Department.

On August 30, 2021, the Department moved for default based on Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing telephone conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

On August 31, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by September 30, 2021.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1 – 11 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Melanie J. Hunter, R.N., is licensed in the state of Wisconsin as a registered nurse with multistate privileges pursuant to the Enhanced Nurse Licensure Compact (Compact), having license number 171237-30, first issued on May 5, 2010, and currently expired as of February 29, 2020. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew her license upon payment of a fee until February 28, 2025.

2. Respondent's most recent address on file with the Department is Watertown, Wisconsin 53098.

3. At all times relevant to this proceeding, Respondent was employed as a registered nurse at a nursing home located in Watertown, Wisconsin (Facility).

4. On May 30, 2019, the Department received a complaint from the Facility alleging that Respondent diverted narcotics from Facility residents and was arrested.

5. On March 16, 2019, Facility Resident A requested her prescribed oxycodone for pain control. Respondent pulled two oxycodone tablets at 4:30 p.m. and documented their administration to Resident A. However, Resident A later said Respondent gave her two white tablets instead of her prescribed 1 mg pink tablet and reported still being in pain.

6. On March 17, 2019, Respondent admitted to police that she replaced Resident A's pink oxycodone tablet with two white Claritin tablets and diverted the oxycodone for her own use. Respondent further admitted she had been diverting approximately ten tablets from Facility residents per week for seven months by replacing the residents' oxycodone tablets with Claritin tablets.

7. On March 17, 2019, the Facility terminated Respondent's employment.

8. On August 12, 2020, Respondent was convicted of three counts of Theft-Movable Property <=\$2500, a misdemeanor, in violation of Wis. Stat. § 943.20(1)(a), in Dodge County Circuit Court Case No. 2019CF000215. She was sentenced to two years' probation and 45 days

in jail. She was also ordered to apologize to the Facility and the victims and maintain absolute sobriety.

9. On January 21, 2021, the Department sent an email to Respondent at her email address on file with the Department requesting her response to the allegations in the complaint. Respondent did not respond.

10. On February 12, 2021, the Department sent a letter to Respondent at her mailing address on file with the Department requesting her response to the allegations in the complaint. Respondent did not respond.

11. On March 9, 2021, a Department investigator telephoned Respondent at her telephone number on file with the Department. Respondent did not answer, and the investigator was unable to leave a voicemail message.

Facts Related to Default

12. On July 22, 2021, the Department served the Notice of Hearing and Complaint on Respondent at her last known address on file with the Department by both certified and regular first-class mail, pursuant to Wis. Admin. Code § SPS 2.08 and Wis. Stat. § 440.11(2).

13. On July 26, 2021, the U.S. Postal Service returned the signed certified mail receipt to the Department indicating the Notice of Hearing and Complaint were delivered to Respondent on July 24, 2021.

14. Respondent failed to file an answer to the Complaint.

15. Following the expiration of the 20-day time period to file an answer, the ALJ scheduled a telephone prehearing conference for August 30, 2021, at 11:00 a.m. The ALJ sent notice of the conference to both parties. The Notice included instructions to Respondent to contact the ALJ no later than August 27, 2021, to provide a telephone number at which she could be reached for the conference. The notice also stated that if Respondent failed to appear at the scheduled conference, default judgment may be entered against her.

16. Respondent failed to contact the ALJ by August 27, 2021, with a telephone number.

17. On August 30, 2021, Respondent failed to appear at the prehearing conference. The Department provided the ALJ with two telephone numbers for Respondent that it had on file. The ALJ attempted to call Respondent at both numbers at 11:00 and 11:16 a.m. The ALJ was unable to connect any of the calls; the line was busy and the ALJ was unable to leave a message. The ALJ also emailed Respondent at her email address on file. Respondent did not respond or attempt to call the ALJ.

18. On August 30, 2021, the Department moved for default judgment based on Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing telephone conference, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c).

19. On August 31, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Department to file a recommended Proposed Decision and Order by September 30, 2021.

20. The Department timely filed its recommended Proposed Decision and Order.

DISCUSSION

Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). The Board has the authority to impose discipline against Respondent pursuant to Wis. Stat. § 441.07(1g).

Default

The Department properly served the Notice of Hearing and Complaint on Respondent by mailing copies to her at her last known address. Wis. Stat. § 440.11(2). Service by mail is complete upon mailing. Wis. Admin. Code § SPS 2.08(1).

An answer to a complaint shall be filed within 20 days from the date of service of the complaint. Wis. Admin. Code § 2.09(4). If a respondent “fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14.

For a telephone prehearing conference, the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for prehearing conference: (1) the failure to provide a telephone number to the ALJ after it had been requested; (2) the failure to answer the telephone; (3) the failure to free the line for the proceeding; and (4) the failure to be ready to proceed with the prehearing conference as scheduled. Wis. Admin. Code § HA 1.07(3)(c).

Here, Respondent failed to file an answer to the Complaint within 20 days from the date of service, failed to appear at the prehearing telephone conference on August 30, 2021, failed to provide a telephone number to the ALJ after it had been requested, failed to answer the telephone when the ALJ called, and failed to be ready to proceed with the prehearing conference as scheduled. Therefore, Respondent is in default and findings may be made, and an order may be entered based on the Complaint.

Violations

Following an investigation and disciplinary hearing, if the Board determines that a nurse has committed “[o]ne or more violations of this subchapter or any rule adopted by the board

under the authority of this subchapter” or has committed “[m]isconduct or unprofessional conduct,” it may revoke, limit, or suspend her license, or reprimand her. Wis. Stat. § 441.07(1g)(b) and (d), respectively.

Conduct that is grounds for the Department to take disciplinary action includes, but is not limited to:

- a. After request of the Board, failing to cooperate in a timely manner, with the Board’s investigation of a complaint filed against a license holder. Wis. Admin. Code § N 7.03(1)(c).
- b. Being convicted of any crime substantially related to the practice of nursing. Wis. Admin. Code § N 7.03(2).
- c. Abusing a patient by a single or repeated act of deprivation which reasonably could cause physical pain, injury, mental anguish, or fear. Wis. Admin. Code § N 7.03(4)(c).
- d. Obtaining, possessing, or attempting to obtain or possess a drug without lawful authority. Wis. Admin. Code § N 7.03(8)(e)

Respondent violated Wis. Admin. Code § N 7.03(1)(c) by failing to cooperate in a timely manner with the Board’s investigation of a complaint filed against her. On January 21, 2021, the Department sent an email to Respondent at her email address on file with the Department requesting her response to the allegations in the complaint. On February 12, 2021, the Department sent a letter to Respondent at her mailing address on file with the Department requesting her response to the allegations in the complaint. On March 9, 2021, a Department investigator telephoned Respondent at her telephone number on file with the Department. Respondent did not answer, and the investigator was unable to leave a voicemail message. Respondent failed to respond to the Department’s attempts to contact her on behalf of the Board.

Respondent violated Wis. Admin. Code § N 7.03(2) by being convicted of a crime substantially related to the practice of nursing. Following her arrest for diverting narcotics from Facility residents, Respondent was convicted of three counts of Theft-Movable Property <=\$2500, a misdemeanor, in violation of Wis. Stat. § 943.20(1)(a), in Dodge County Circuit Court Case No. 2019CF000215 on August 12, 2020. She was sentenced to two years of probation and 45 days in jail. She was also ordered to apologize to the Facility and the victims, and to maintain absolute sobriety.

Respondent possesses a multistate license from Wisconsin with privileges to practice in other states pursuant to the Compact. A nurse who possesses a multistate license is ineligible to retain or renew that license if the nurse incurs a disqualifying event after the effective date of the Compact. Wis. Stat. § 441.51(3)(g). The effective date of the Compact is July 20, 2017. Being convicted of a misdemeanor offense related to the practice of nursing after July 20, 2017, is a disqualifying event. Wis. Stat. § 441.51(3)(c)8.

Respondent was convicted of a misdemeanor that was substantially related to her nursing practice on August 12, 2020; therefore, she is ineligible to retain or renew her Wisconsin

multistate license to practice nursing. Respondent retains the right to renew a Wisconsin single-state registered nursing license, subject to the terms of the Order below.

Finally, Respondent violated Wis. Admin. Code §§ N 7.03(4)(c) and (8)(e) by abusing a patient by a single or repeated act of deprivation which reasonably could cause physical pain, injury, mental anguish, or fear, and by obtaining, possessing, or attempting to obtain or possess a drug without lawful authority, respectively. On March 16, 2019, Facility Resident A requested her prescribed oxycodone for pain control. Respondent pulled two oxycodone tablets at 4:30 p.m. and documented their administration to Resident A. However, Resident A later said Respondent gave her two white tablets instead of her prescribed 1 mg pink tablet and reported still being in pain. The next day, Respondent admitted to police that she replaced Resident A's pink oxycodone tablet with two white Claritin tablets and diverted the oxycodone for her own use. Respondent further admitted she had been diverting approximately ten tablets from Facility residents per week for seven months by replacing the residents' oxycodone tablets with Claritin tablets.

By her actions, Respondent has committed grounds for discipline pursuant to Wisconsin Administrative Code § N 7.03 and is subject to discipline pursuant to Wis. Stat. § 441.07(1g)(b) and (d).

Discipline

The Department recommends that Respondent's right to renew her license to practice as a registered nurse in the state of Wisconsin be suspended for three months, after which she may apply to renew her license only after providing proof to the Board that she has complied with the drug and alcohol treatment and monitoring requirements, and other practice limitations, as stated in the Order below.

The three purposes of discipline in a professional misconduct case are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976).

The recommended discipline is consistent with the purposes articulated in *Aldrich*. The uncontroverted allegations in the Complaint are serious ones. Respondent replaced Facility residents' prescribed oxycodone with Claritin and diverted the oxycodone for her own use for seven months, depriving the residents of their prescribed pain medication and causing them prolonged pain. Respondent was convicted of misdemeanor theft for her actions and was sentenced to two years of probation and 45 days in jail. She was also ordered to apologize to the Facility and the victims and maintain absolute sobriety. When Respondent failed to cooperate with the Board's investigation of those allegations, she impeded and delayed that investigation, further putting public safety at risk.

The recommended discipline protects the public and promotes Respondent's rehabilitation. "Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). Suspending Respondent's right to renew her

license for three months, and then only allowing her to apply to renew her license after she provides proof to the Board she has entered into, and is complying with for at least 30 days, drug and alcohol treatment and monitoring programs, protects the public by preventing Respondent from practicing nursing until the Board is assured she can practice safely. Entering a drug and alcohol treatment program also promotes Respondent's rehabilitation. Finally, the suspension of the right to renew her license will remind Respondent of her duty to abide by the Board's rules of professional conduct, to timely respond to Board inquiries, and indicate to Respondent that her actions have serious consequences for her licensure.

The recommended discipline deters other credential holders from engaging in similar conduct. Respondent has stolen narcotics from nursing home residents and disregarded the Board's authority as well as the laws in place to protect public health and welfare. Imposing anything less than a suspension and drug and alcohol treatment and monitoring would not deter other credential holders from engaging in similar conduct and could imply that such conduct by a licensee is tolerable.

The recommended discipline is consistent with Board precedent. *See In the Matter of Disciplinary Proceedings Against Amanda J. Kaufman, R.N.*, Order Number 0007254 (March 11, 2021) (nursing license was suspended for three months after which it could be stayed upon proving compliance with drug and alcohol treatment and monitoring requirements after respondent was convicted of a felony for substituting a patient's oxycodone with another medication and diverting the oxycodone for herself);² *see also In the Matter of Disciplinary Proceedings Against Nichole Bowes, R.N.*, Order Number 0006649 (February 13, 2020) (respondent's nursing license was suspended indefinitely but stayed under the condition that within 30 days she enter into drug and alcohol treatment and monitoring programs for diverting hydromorphone from a hospital for her own use).³

Based upon the facts of this case and the factors set forth in *Aldrich*, the discipline recommended by the Department, pursuant to the terms and conditions of the Order below, is reasonable and warranted.

Costs

The Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See Wis. Stat. § 440.22(2)*. In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. In previous orders, Boards have considered the following factors when determining if all or part of the costs should be assessed against a respondent: (1) the number of counts charged, contested and proven; (2) the nature and seriousness of the misconduct; (3) the level of discipline sought by the prosecutor; (4) the respondent's cooperation with the disciplinary

² This decision is available online at: <https://online.drl.wi.gov/decisions/2021/ORDER0007254-00017510.pdf>.

³ This decision is available online at: <https://online.drl.wi.gov/decisions/2020/ORDER0006649-00016373.pdf>.

process; (5) prior discipline, if any; (6) the fact that the Department is a program revenue agency, funded by other licensees; and (7) any other relevant circumstances. *See In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS0802183CHI (Aug. 14, 2008). It is within the Board's discretion as to which of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

Considering the above factors, it is appropriate for Respondent to pay the full costs of the investigation and of this proceeding. Respondent defaulted and the factual allegations identified in the Complaint were deemed admitted. Respondent was convicted of stealing pain medication from nursing home residents, causing them prolonged pain, and then failed to cooperate with the Board's investigation after repeated attempts to contact her. Finally, Respondent failed to provide current contact information to the ALJ, failed to appear at the prehearing conference, and failed to file an answer to the Complaint or otherwise provide any argument regarding the allegations brought against her license to practice as a registered nurse in Wisconsin.

The Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. It would be unfair to impose the costs of pursuing discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and this proceeding, as determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that Respondent's right to renew her single-state license to practice as a registered nurse in the state of Wisconsin (license number 171237-30) is SUSPENDED for three (3) months from the date of this Order. Respondent's multistate license is deactivated and will not be renewed.

IT IS FURTHER ORDERED that after three (3) months from the date of this Order, Respondent may apply to renew her license to practice as a registered nurse after providing proof, which is determined by the Board or its designee to be sufficient, that she is compliant with the provisions of Sections B and C of this Order for a period of at least thirty (30) consecutive days.

IT IS FURTHER ORDERED that upon renewal of her license, Respondent shall comply and/or continue to comply with the following provisions:

- A.1. The Board or its designee may, without hearing, suspend Respondent's license to practice as a registered nurse upon receipt of information that Respondent is in violation of any provision of this Order. The Board or its designee may, in conjunction with any suspension, prohibit the Respondent for a specified period from seeking a stay of the suspension under paragraph A.3.
- A.2. Any suspension of Respondent's license becomes effective immediately upon notice being provided to Respondent either by:

- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services (Department) pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or her attorney.
- A.3. The Board or its designee may stay the suspension, if provided with sufficient information that Respondent is compliant with the Order and that it is appropriate for a stay of suspension to occur. Whether to stay the suspension shall be wholly in the discretion of the Board or its designee.

CONDITIONS AND LIMITATIONS

Treatment Required

- B.1. Respondent shall enter, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- B.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- B.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See C.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- B.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by C.5., below.
- B.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.

Releases

- B.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories, and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

B.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an approved equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified by the speaker or chair and reported quarterly to Treater and the Department Monitor.

Sobriety

B.8. Respondent shall abstain from all personal use of alcohol.

B.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed, or administered by a practitioner for a legitimate medical condition. Respondent shall disclose her drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner prescribing the controlled substance. Respondent shall, at the time the controlled substance is prescribed, immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.

B.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph B.11. It is Respondent's responsibility to educate herself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.

B.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty-four (24) hours of administration, fill, or refill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered, or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of the prescription to the Department Monitor.

Drug and Alcohol Screens

- B.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- B.13. At the time she enrolls in the Approved Program, Respondent shall review all rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends, and holidays.
 - (b) Production of a urine, blood, sweat, nail, hair, saliva, or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- B.14. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year (one of which must be a hair test), for at least the first year of this Order. Thereafter the Board may adjust the frequency of testing on its own initiative at any time, and/or Respondent may petition for modification of testing frequency per paragraph C.5.
- B.15. If any urine, blood, sweat, nail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations, as the Board or its designee shall determine to be appropriate, to clarify or confirm the positive or suspected positive test results.
- B.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- B.17. All confirmed positive test results shall be presumed valid. Respondent must prove, by a preponderance of the evidence, an error in collection, testing, fault in the chain of custody, or other valid defense.
- B.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- B.19. Respondent shall not work as a nurse or other health care provider in a setting in which she has access to controlled substances.

- B.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional, approved by the Board or its designee, who has received a copy of this Order.
- B.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for pre-approval must be accompanied by a current job description, name and contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order has been received and that the restrictions will be accommodated.
- B.22. Respondent may not work in a home health care, hospice, pool nursing, assisted living, agency, or as a nurse in a correctional setting.
- B.23. Respondent shall provide a copy of this Order, and any subsequent order modifying this original Order, immediately to supervisory personnel at all settings where she works as a nurse or care giver or provides health care, currently or in the future. Within fourteen (14) days from the date of this Order, and any subsequent order modifying this original Order, Respondent shall provide the Department Monitor with written acknowledgment from the employer that a copy of this Order, and any subsequent order modifying this original Order, have been received and that the restrictions will be accommodated.
- B.24. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her supervisor at each setting in which Respondent practiced nursing in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter. If a report indicates less than satisfactory performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- B.25. Respondent shall report to the Board any change of employment status, residence, mailing address, email address, or telephone number within five (5) days of the date of a change. This report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

MISCELLANEOUS
Department Monitor

- C.1. Any requests, petitions, reports, and other information required by this Order shall be submitted to the Department Monitor at the address below.

Required Reporting by Respondent

- C.2. Respondent is responsible for compliance with all terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved

Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.

- C.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current address, and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- C.4. If the Board, or its designee, determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board, or its designee, may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- C.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- C.6. Respondent may petition the Board for termination of this Order after demonstrating five (5) years of successful compliance with all terms, including at least 600 hours of approved nursing practice each year. The Board may, on its own motion, grant full Wisconsin licensure at any time.

Costs of Compliance

- C.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision, and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

IT IS FURTHER ORDERED that in addition to any other action authorized by this Order or the law, the Board, in its discretion, may pursue separate disciplinary action for violation of any term of this Order.

IT IS FURTHER ORDERED that Respondent pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to the address below:


Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dpsmonitoring.wi.gov>.

IT IS FURTHER ORDERED that the terms of the Order are effective the date the Final Decision and Order in this matter is signed by the Board.

Dated at Madison, Wisconsin, on October 20, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-7709
FAX: (608) 264-9885
Email: Angela.ChaputFoy@wisconsin.gov

By: 
Angela Chaput Foy
Administrative Law Judge